IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/02/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION No.10441 of 1997
and W.P.Nos.12949 to 12965 13170 to 13186, 13264 to 13284, 13684 to 13696, 13863 to 13876, 14266 to 14275, 15127, 15132, 15258 to 15261, 17086, 17087, 17354, and 17106 of 1997
and
WMP Nos:20825 to 20858, 21179 to 21212, 21324 to 21365, 21975 to 2200 0, 22278 to 22305, 22904 to 22923, 24109, 24119, 24110, 24120, 24285, 24287, 24289, 24291, 27060 to 27064, 27105, 17558, 27744 and 27745 of 1997.

W.P.No:10441 of 1997

The Divisional Personal Officer
Divisional Office (PB)
Southern Railway,
Palghat ..Petitioner

-Vs-

1. Unnamalai
C/o.the General Secretary
Southern Railway Labour Union,
Kochi

2. The Regional Labour Commissioner
(Central) and Appellate Authority
under Payment of Gratuity Act, 1972
26, Haddows Road, Shastri Bhavan
Madras-34

3. The Assistant Labour Commissioner,
(Central)-I,
Madras. ..Respondents

Petitions filed under Article 226 of The Constitution of India praying for the issue of a writ of certiorarified Mandamus, as stated therein.

For petitioners:: Mr.V.G.Suresh Kumar

For respondents:: Mr.S.Senthilnathan, Amicus Curiae
for R.1

Mr.R.Santhanam ACGSC

:COMMON ORDER

In the above batch of writ petitions, the only point that arise for consideration is:
Whether the second respondent-appellate authority constituted under the Payment of Gratuity Act, 1972 has the power to restore the appeals dismissed for non prosecution by the appellant before it?

2. The first respondent in each of the writ petition is the workman, the third respondent is the Controlling Authority and the second respondent is the appellate authority under the Payment of Gratuity Act, 1972. The writ petitioner is the employer. The first respondent in each of the writ petition moved the third respondent for a direction to pay gratuity, while claiming that he is a workman employed by the petitioner-Railways. The said claim of the workman for direction to pay gratuity was resisted by the writ petitioner-Railways contending that the first respondent is not a workman engaged by the Railways, but he was engaged by the Contractor. Despite objections, the third respondent Controlling Authority, while condoning the delay in moving the application by order dated 30.11.1994 directed the petitioner/Railway Administration to pay Gratuity with simple interest at 10% per annum within thirty days of the receipt of the order under Section 7(3)(a) of the Act. Aggrieved by the said order of the third respondent directing the petitioner/Railways to pay various sums towards gratuity, the petitioner/Railways herein preferred an appeal before the second respondent who is the appellate authority raising number of contentions including the contention that claim is not maintainable, that the claim is barred by limitation and that there is no relationship of employer and employee. The Writ petitioner/Railways preferred appeal before the second respondent. The appeals were dismissed for non appearance on different dates. It has been specifically recorded that the writ petitioner/appellant has failed to appear on dates of hearing either through its representative or counsel and failed to take part in the hearing. As even after few adjournments the petitioner failed to extend the necessary cooperation, the second respondent by separate proceedings passed in each of the appeal dismissed the appeals for non prosecution on 30.5.1999. Being aggrieved the present batch of writ petitions have been filed. Few of the writ petitions have already been dismissed for non prosecution with which we are not concerned.

4. The second respondent, by the impugned order, dismissed the application filed by the writ petitioner to set aside the dismissal and seeking for restoration. Being aggrieved, the present batch of writ petitions have been preferred challenging the rejection of the application to restore/readmit the appeals.

5. It is the contention of the counsel for the writ petitioner that the order passed by second respondent appellate authority in dismissing the applications taken out by the petitioner for restoration of the appeals is illegal, it is a refusal to exercise jurisdiction vested in it, suffers with

error apparent on the face of the record and liable to be quashed.

6. As the contesting respondents have not chosen to appear this court appointed Mr.S.Senthilnathan, a Member of the Bar to assist the court. The learned counsel who has been appointed as Amicus Curiae by this court after going through the papers submitted that the view of the second respondent that application for restoration is not maintainable cannot be sustained.

7. It is well settled that in terms of Section 4 of the Gratuity Act, the employee has got a right to receive gratuity as has been held by the Supreme Court in Balbir Kaur Vs. SAIL, reported in 2000(6) SCC 493. In State of Punjab Vs. Labour Court and others, reported in 1 980 (1) SCC 4, the Apex Court held that the provisions of Payment of Gratuity Act, 1972 is a self contained Code and its provisions impliedly exclude recourse to any other statute for payment of Gratuity. In the present case the claim of the workmen was resisted by the writ petitioner/Railways and as the Controlling Authority ordered payment of gratuity the petitioner/Railways preferred appeals before the appellate authority after complying with the requirement in this behalf, namely by pre-deposit of the amount ordered to be paid by the Controlling Authority.

8. Section 2 of The Payment of Gratuity Act, 1972 defines the expression "Controlling Authority", "employer", "employee" Section 2 defines various words as seen from clauses (a) to (S). Section 2A defines what is "continuos work". Section 3 confers power on the appropriate Government to appoint an officer to be the Controlling Authority who shall be responsible for the administration of the Act. Section 4 provides that gratuity shall be payable to an employee on the termination of the employment after he has rendered continuous service of not less than five years, on his superannaution or retirement or resignation or his death or disablement. Sub section (4) of Section 4 prescribes the method of computation of gratuity payable to an employee. Section 7 provides for determination of amount of gratuity payable and in case of dispute with regard to any matters the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute. Sub section (5) of Section 7 provides for conducting an enquiry for the purpose of sub section (4).

9. The said sub section (4) of Section 7 provides that the controlling authority shall have the same powers as are vested in a court while trying a suit, under the Code of Civil Procedure in respect of the following matters, namely:-
(a) enforcing the attendance of any person or examining him on oath;
(b) requiring the discovery and production fo documents;
(c.) receiving evidence on affidavits;
(d) issuing commissions for the examination of witnesses.

10. Sub section (6) of Section 7 declares that any enquiry under section 7 shall be a judicial proceeding within the meaning of Sections 192 and 228 and for the purpose of Section 196 of the Indian Penal Code. Sub section (7) of Section 7 provides for an appeal by any person aggrieved by an

order made under sub section (4) within thirty days from the date of receipt of the order. Proviso to sub section (7) of section 7 provides for extension of period for preferring appeal. Proviso to sub section (7) confers powers to condone delay in preferring the appeal by the appellate authority. In terms of sub section (8) of Section 7, the appellate authority may after giving the parties to appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

11. In the present case the appropriate Government is the Central Government and The Rules of Payment of Gratuity (Central Rules) 1972 applies to the proceedings before the second and third respondent. Rule 11 prescribes the procedure for dealing with the application for direction filed under Rule 10. Rule 18 relates to preferring an appeal. Sub rule (5) of Rule 11 provides that the controlling authority may on good cause being shown set aside the order. Sub rule (6) of Rule 18 [Payment of Gratuity (Central Rules, 1972] provides that the appellate authority shall record its decision after giving the parties to the appeal a reasonable opportunity of being heard.

12. In the present case the appeals were presented in time. But they were dismissed for non prosecution as seen from the order impugned. The writ petitioner/Railways moved the application for restoration of the appeals dismissed for non prosecution and for rehearing the appeals on merits. The said applications were dismissed by the second respondent. No order of rejection has been passed in all the matters. The said common order reads thus:-

"Even under Rules referred to above, the Appellate authority has not been empowered by the Legislature to either set aside the orders already passed by the Appellate Authority himself or to or to pass any interim sty orders or to give any other orders under this Act and Rules made thereunder. In the absence of such powers vested to the Appellate Authority by the Legislature, entertaining the Interim Applications will tantamount to trespassing the jurisdiction not envisaged to the Appellate authority under the Act and Rules in question.

In this very enactment and Rules made thereunder, (the proviso of sub rule 5 of rule 5), it is evident that the controlling Authority has been vested with the powers of reviewing the decision given by him and also to rehear the applications within 30 days of the said Order issued as ex parte order by giving 14 days notice to the opposite party. Whereas such a power is not vested or contemplated or envisaged to the Appellate Authority.

Under the above circumstances, considering the provisions of Law which is in vogue on the issue and in the absence of the powers contemplated or envisaged or vested to the Appellate Authority, the instant interim applications filed by the appellate Railway for setting aside the Decision already given or for rehearing or for reopening or for staying the operation of the order already passed are not found entitled to be entertained under the provisions of the Payment of Gratuity Act and Rules made thereunder. An accordingly, the prayers made by the Appellant Railway are disallowed and the interim applications are dismissed."

13. In the view of the second respondent appellate authority, no power has been conferred on the appellate authority to restore the appeal dismissed for non prosecution or to set aside the ex parte order an incidental powers, though such power has been conferred on the third respondent, the controlling authority. In that view of the matter the applications filed to re admit/restore the appeals were dismissed. This court has to consider whether the second respondent appellate authority has the powers to restore the appeals or re admit the appeals preferred by the writ petitioner/Railways dismissed for default.

14. It is well settled law that even quasi judicial authorities, apart from the powers conferred on them have incidental powers to regulate the proceedings. It is also settled law that the powers of the appellate authority is co extensive with that of the original authority. It is the view of the second respondent that the second respondent has not been conferred with the power to set aside the dismissal and to restore the appeals dismissed for default/non prosecution.

15. The learned counsel for the petitioner Mr.V.G.Suresh Kumar, relied upon the pronouncement of the Apex court in Income-tax Officer, Cannanore Vs. M.K.Mohammed Kunhi reported in AIR 1969 S.C 430. Their Lordships of the Supreme Court had occasion to consider the scope of Sections 254, 255, 220(6) and 246 of the Income-tax Act, 1961 and held that the Income Tax Appellate Tribunal has power to grant stay as it is an incidental or ancillary to its appellate jurisdiction. The Apex Court in this respect held thus:-

"..It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, Third Edition, Articles 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. In domat's Civil Law, Cushing's Edition, Vol1 at page 88, it has been stated:

"It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it".

Maxwell on Intrpretation of Statutes, Eleventh Edition contains a statement at p. 350 that "where an Act onfers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution. Cui Jurisdictio data est, ea quoqe concessa esse vindentur, sine quibus jurisdictio explicari non potuit." An instance is given based on Ex Parte, Martin,l (1879) 4 QBD 212 at p. 491 that "Where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced."

"...It could well be said that Wen Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying

proceeding as will prevent the appeal if successful from being rendered nugatory."

16. Mr.V.G.Suresh Kumar, also referred to the pronouncement of the Supreme Court in Directorate of Enforcement Vs. Deepak Mahajan and another reported in Judgment Today 1994 (1) S.C. 290, and pointed out that while interpreting the provisions of enactment, such interpretation should be purposeful interpretation and the court has to find out what is the intendment of the Legislation.

17. The learned counsel relied upon the following passage in 1994 (1) SCC 290:

"31. True, normally courts should be slow to pronounce the legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary grammatical meaning of the words of the enactment as affording the best guide, but to winch up the legislative intent, it is permissible for courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. In cases of this kind, the question is not what the words in the relevant provision mean but whether there are certain grounds for inferring that the legislature intended to exclude jurisdiction of the courts from authorising the detention of an arrestee whose arrest was effected on the ground that there is reason to believe that the said person has been guilty of an offence punishable under the provisions of FERA or the Customs Act which kind of offences seriously create a dent on the economy of the nation and lead to hazardous consequences. Authorities, a few of which we have referred to above, show that in given circumstances, it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile."

18. In Grindlays Bank V. Central Government Industrial Tribunal, reported in AIR 1981 SC 606 an identical question arose as in this case as to whether the Industrial Tribunal has the power to set aside the ex parte award. The Apex Court in the said case while pointing out that neither the Industrial Disputes Act, nor the Rules framed thereunder contains specific provisions conferring power upon the tribunal to set aside the ex parte award. In this respect the Apex Court held thus:-
"6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties.

In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary." (emphasis supplied)

20. In Satnam Verma Vs. Union of India, reported in AIR 1985 SC 294, the Supreme Court following the decision in Grindlays Bank Vs. Central Government Industrial Tribunal, cited above held thus:-

"7. In the case of Grindlays Bank Ltd.1, the specific contention canvassed was whether where an ex parte award is made and published in the Official Gazette, the Industrial Tribunal has the jurisdiction to entertain the application for setting it aside if sufficient cause is shown for absence of appearance on the date on which an ex parte award was made and it was answered in the affirmative. This Court referred to Rule 22 and Rule 24(6) of the Industrial Disputes (Central) Rules, 1957 and held that the Industrial Tribunal had the power to pass an order setting aside the ex parte order. In reaching this conclusion, the Court observed that if the Tribunal has the power to proceed ex parte as provided by Rule 22, it should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties....."

..."The Court held that the Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders. We have extensively referred to this decision because it effectively answers all the limbs of the contention canvassed before us and which unfortunately, found favour with the Labour Court and the High Court." (emphasis supplied)

21. Mr.S.Senthilnathan, learned counsel who was appointed as Amicus Curiae also pointed out that if an appeal preferred by a workman is dismissed for non prosecution or for default, the workman may have to move the appellate authority for restora and if the view of the second respondent is sustained, it will work hardship to the poor workmen.

22. Mr.S.Senthilnathan, Amicus Curiae, referred to the pronouncement of a Division Bench of the Calcutta High Court in Bhanora Colliery Etc.,Co., V. Poda Teli, reported in 1974 LLJ Vol.2 page 520. In the said pronouncement, a Division Bench of the Calcutta High Court had occasion to consider as to whether the Commissioner for Workmen's Compensation has incidental powers to allow an application for amendment to the original claim petition.

23. In that context, the Division Bench of the Calcutta High Court, held thus:-

"Under S.19 of the Act the Commissioner has to settle the claim,if the question cannot be settled by agreement. Therefore, it must be presumed that in furtherance of the powers of settling the Commissioner should have all the

incidental and ancillary powers unless the statute provides to the contrary. In this connection reliance may be place on Halsbury's Laws of England, Vol.36 page 436. Even though, therefore, the Commissioner has power to allow an amendment within the period of limitation as was done in this case, the said power must be exercised in consonance with the principles of justice and should be exercised by giving such reasonable opportunity to the opposite parties as are necessary in a particular case." (emphasis supplied)

24. The learned counsel also referred to the pronouncement of the Kerala High Court in K.V.Aboo Vs. Commissioner, Workmen's Compensation, reported in 1977 (2) LLJ 134 where Chandrasekhara Menon J., held that the liberty of inherent power to remedy injustice applies to quasi- judicial authorities also.

25. The earliest pronouncement of the Apex Court in this respect being in Martin Burn Ltd., Vs. R.N.Banerjee, reported in 1958 SC 79 where the Supreme Court held that the Labour Appellate Tribunal has jurisdiction to set aside the ex parte order and restore the application.

26. In Dhani Devi Vs. Sant Bihari Sharma and others reported in AIR 1970 SC 759, the Apex Court had examined the case as to whether quasi judicial authority has the power to substitute the legal representatives of the applicant and affirmed that such power the quasi judicial authority do possess. The Apex court held that the Regional Transport Officer has power to substitute a person succeeding to the possession of the vehicle and the Apex Court held thus:-

"In the absence of any statute or statutory rule, the Regional Transport authority may devise any reasonable procedure for dealing with the situation. As stated in American Jurisprudence, 2nd Vol.2 (Administrative Law), Article 340 P.155 "Where the statute does not require any particular method of procedure to be followed by an administrative agency, the agency may adopt any reasonable method to carry out its functions". (See also Corpus Juris Secondum, Vol.73(public Administrative Bodies and Procedure, Article 73, P.399)). The Regional Transport Authority has complete discretion in the matter of allowing or refusing substitution. It is not bound to embark upon prolonged investigation into disputed questions of succession. Nor is it

bound to allow substitution if such an order will delay the proceedings unreasonably or will otherwise be detrimental to the interests of the public generally."

27. Thus on a conspectus consieration of the above pronouncements which are binding, it is clear that the second respondent appellate authority possess incidental powers including the power to restore the appeal dismissed for non prosecution or for default as the case may be, less the same will cause delay and defeat the very quasi judicial administration by the said authority. In the present case, there is no rule or statutory provision which bars or prohibits the second respondent from restoring the appeals. Hence following the pronouncements of the Supreme Court this court holds that the

order impugned deserves to be quashed.

28. One another aspect requires to be highlighted being that the second respondent is the appellate authority. He has been conferred with the power to remand, set aside or allow the appeal as seen from Sub section (8) of Section 7 which provision also mandates that a reasonable opportunity of being heard should be afforded before confirming or modifying or reversing the decision of the controlling authority. That apart sub rule (6) of Rule 18 of the Payment of Gratuity (Central) Rules also mandates that the appellate authority shall record its decision after giving the parties to the appeal a reasonable opportunity of being heard. If the view of the second respondent is to be sustained, then the second respondent has to either confirm, modify or reverse the decision of the controlling authority as provided in sub section (8) of section 7. But in this case, the second respondent has not confirmed the orders of Controlling Authority, but has dismissed the appeal for non prosecution. It is not as if the second respondent in this case has passed orders on merits confirming the order passed by the controlling authority. Therefore the impugned proceedings of the second respondent is also not in conformity with sub section (8) of section 7.

29. Yet another angle being that the powers of the appellate authority is co-extensive with that of the original authority. In State of Andhra Pradesh Vs. Hyderabad Associate Cement Production Ltd., reported in 1994 (5) SCC 100, the Apex Court held that the power of the appellate authority is co-extensive with that of the original authority and therefore what can be done by the original authority can equally be done by the appellate authority.

30. While considering the power of revision of a quasi judicial authority, the Apex Court in Ram Vs. Board of Revenue and others, reported in 1976 (3) SCC 365 while pointing out that the scope and ambit of the revisional jurisdiction of the varies from statute to statute, the Apex Court held that the revisional authority also has the incidental powers.

31. In the present case, it is also the view of the second respondent that the third respondent-Controlling Authority has the power to set aside the ex parte rejection or dismissal, but the second respondent had taken the view that it has no such power. This view cannot be sustained at all in the light of the above pronouncements.

32. As already pointed out, being a quasi judicial authority exercising powers of appeal, the second respondent's power is co extensive with that of the controlling authority and that apart the second respondent has incidental powers to restore an appeal which has been dismissed for non prosecution.

33. In the light of the above discussions and for the above reasons all the writ petitions are allowed. The impugned proceedings of the second respondent is quashed. This court set aside the impugned proceedings of the second respondent in all the writ petitions and remit the matter to second respondent for fresh consideration. All the above writ petitions are allowed

but without cost and consequently all the connected WMPs are closed. The

parties shall bear their respective cost.

19-02-2003

Index:yes
Internet:yes
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To

1. The Regional Labour Commissioner
(Central) and Appellate Authority
under Payment of Gratuity Act, 1972
26, Haddows Road, Shastri Bhavan
Madras-34

2. The Assistant Labour Commissioner,
(Central)-I,
Madras.